

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

NORTHWEST TRANSPORTATION
SERVICE, INC.

Employer

and

AMALGAMATED TRANSIT UNION,
DIVISION 618, AFL-CIO

Petitioner

Case 1-RC-21874

DECISION AND DIRECTION OF ELECTION¹

The Union seeks to represent a unit of about 14 full-time and 3 regular part-time van drivers employed by Northwest Transportation Services, Inc., (the Employer or Northwest) at its Woonsocket, Rhode Island facility but excluding office clerical employees, mechanics, and maintenance employees.

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

With its post-hearing brief, the Petitioner attached a *Ride Program* booklet. Since this booklet is not part of the record and there is no motion before me to admit it into evidence, I have not considered the booklet in reaching my decision.

The sole issue in this proceeding is the inclusion of the three part-time drivers.² The Union maintains they share a community of interest with the full-time drivers. The Employer seeks to exclude the three part-time drivers on the basis that they do not hold CDL-C licenses and have a separate community of interests from full-time drivers. In this regard, the Employer asserts that because the three part-time drivers operate a different type of van, work with a different level of licensure, have different (part-time) hours, transport mentally disabled passengers to their jobs rather than elderly or disabled passengers to medical appointments or other locations, are paid at a slightly lower wage rate, use some different equipment, and do not fill out the same paperwork, they do not have a sufficient community of interest with the 14 full-time drivers to be included in the unit.³ I find, as discussed more fully below, that the part-time drivers at issue do share a sufficient community of interests with the full-time drivers such that I shall include them in the unit found appropriate.⁴

Facts

The Employer, located at 664 Front Street, Woonsocket, Rhode Island, is a Rhode Island corporation engaged in providing transportation services to the elderly and handicapped.⁵ William Legare is the owner. Deborah Tancrell is the manager. There is also a Human Resources Director, Henry Zapasnik. Tancrell works exclusively for Northwest. It is not known if Zapasnik works exclusively for Northwest or whether he performs this function for Legare's other businesses as well.

² Albert Lataille, Robert Miclette, and Margaret Thompson.

³ In its post-hearing brief, the Employer agrees that regular part-time drivers would appropriately be included in a unit with full-time drivers but maintains that this would only be the case if they hold CDL-C licenses and perform the same work as full-time drivers. There is no evidence that there are any part-time drivers employed at this facility who meet this description since all CDL-C drivers work full time. The only regular part-time drivers discussed in the record are the three in issue. There is, however, a very brief mention in the record that there is at least one spare driver and perhaps more on a spare list. Neither party expressed any position, however, at the hearing or in their post-hearing briefs regarding whether or not the spare(s) should be included in the unit. In the absence of evidence regarding the working conditions of the spare(s) and the frequency with which they perform bargaining unit work (see *V.I.P Movers*, 232 NLRB 14 (1977)), and in the absence of any position of the Parties, I cannot determine whether the spare(s) should be included in the appropriate unit. Therefore, any spare who seeks to vote will do so under challenge.

⁴ Moreover, I find the Employer has not shown that the part-time drivers constitute a functionally distinct group with special interests sufficiently distinguishable from those of the Employer's other employees to warrant severing them from the drivers' unit. See Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

⁵ At this location, there are three other businesses, also owned by William Legare: Valley Cab (taxi service), Valley Transportation Corp. (school bus and charter service), and Traveler's Transit (contracted transportation). Neither party seeks to include any of the employees of these businesses in the unit.

Manager Deborah Tancrell, who oversees all drivers, was the only witness to testify at the hearing. Tancrell hires and schedules the drivers, sends them to training, assigns their hours, and directs their work. Tancrell has worked for the employer for 20 years. Tancrell also oversees the dispatcher, Pauline Aubin, who transmits orders and scheduling changes to the drivers regarding what to do and where to go during the day.⁶ In Aubin's absence, Tancrell performs dispatching duties.

The Employer has two classifications of drivers: full-time drivers and part-time drivers. The full-time drivers drive paratransit vans that have wheelchair lifts. Drivers of these vans are required to hold a state of Rhode Island issued CDL-C license, which is a commercial driver's license. The paratransit vans seat up to 17 ambulatory passengers and two passengers in wheelchairs. The part-time drivers drive regular passenger vans. They need only a state of Rhode Island issued Class 1 license, which is a chauffeur's license. The passenger vans seat up to 15 passengers. All vans are marked with the Employer's name.

The CDL-C, full-time drivers are generally scheduled to work from about 5:00 a.m. or 7:00 a.m. to about 4:00 p.m. or 5:00 p.m. The CDL-C drivers transport elderly and disabled individuals to various appointments, such as doctor's offices, kidney centers, hospitals, etc. within the "*Ride*" program on behalf of the Rhode Island Public Transit Authority (RIPTA). At the beginning of the shift, the CDL-C drivers are given a manifest that indicates where and when the driver should pick up or drop off passengers. This manifest changes daily. In addition, there may be other changes throughout the day. In order for the dispatcher to keep in contact with the CDL-C drivers and transmit schedule changes to them, the CDL-C drivers carry company provided Nextel phones. The full-time drivers are paid on an hourly basis, beginning at \$9.00 per hour, and regularly receive overtime. Full-time drivers receive health insurance, with 75 percent of the cost paid by the Employer. Full-time drivers also receive vacation time.

The Class 1 part-time drivers generally work on split shifts from about 6:45 a.m. to 9:00 a.m. and 2:00 p.m. to about 4:30 p.m. Class 1 drivers transport passengers with mental disabilities to specific work centers.⁷ Unlike the CDL-C drivers' routes, the Class 1 routes are regular cycles that do not require daily manifests. Because there is usually no need for the dispatcher to contact the Class 1 drivers in the course of their shift, the Employer does not provide them with Nextel phones. They do, however, carry a cell phone in case they need to call the office with a problem. The part-time drivers are also paid on an hourly basis but at a rate beginning at \$8.00 per hour. Part-time drivers do not

⁶ The Petitioner does not seek to include the dispatcher in the unit. At the hearing, the parties stipulated the dispatcher should be excluded from the unit but did not state the basis for the exclusion.

⁷ These include the John E. Fogerty Center, the Blackstone Valley Center, and Northern Rhode Island Community Mental Health.

receive overtime. As part-time employees, Class 1 drivers do not receive health insurance or vacation benefits.

Both CDL-C and Class 1 drivers have the same uniform. Both share use of a drivers' room at the Employer's facility.⁸ Both park their vehicles together in the Employer's parking lot. As indicated above, they share common supervision in Ms. Tancrell. In addition, the same trainer trains both the CDL-C and Class 1 drivers. Both report to, and work out of, the same facility. The same dispatcher directs both groups of drivers, although the dispatcher has less of a need to direct the Class 1 drivers. Both groups of drivers must fill out daily time sheets, although CDL-C drivers must complete additional paperwork that is submitted to the RIPTA. Because all the drivers are on the road during the course of the workday, they do not regularly encounter one another.

When applicants seek a CDL-C driver position, they come into the Employer's facility and fill out an application. Then, the applicants meet with Human Resources Director Henry Zapasnik, who determines whether they are good candidates. If the applicants are selected, they are given a CDL book and told what tests they need to take. The Employer then trains the individuals to pass the tests by having the trainer⁹ work with them for about 10 hours or so over two to five days. The trainer determines when the applicants are ready to take the CDL test, which is given at the Rhode Island Registry of Motor Vehicles. The CDL test is strictly a written test with no on-the-road component. Therefore, the Employer needs to do road training as well. The applicant is put on a training list. When the trainer notifies Tancrell in writing that the applicant is ready for the road, has the appropriate licensures, and has completed the RIPTA training, which includes training on how to transport people in wheelchairs, he/she will be assigned work as a CDL-C driver.

Applicants for the Class 1 positions fill out an application and then take a form to the police department to affirm they have no record. The applicants must then go to the Rhode Island Registry of Motor Vehicles to obtain a Class 1 license. After that, Tancrell places the applicant with the trainer in a 15-passenger van. Tancrell makes the hiring decision. The Employer encourages Class 1 licensed drivers to obtain a CDL license and apply for a CDL-C position. The Employer will reimburse an applicant or driver for the testing and training after they pass the CDL test. Infrequently, perhaps once every eight months, a CDL driver may fill in for a Class 1 driver. One driver has made the transition from Class 1 driver to CDL-C driver.¹⁰

⁸ This drivers' room is also shared with employees of the other companies at the site.

⁹ The Employer's trainer, long-time driver Jim Ackley, performs CDL driving when he is not training new drivers. The parties stipulated at the hearing that the trainer should be included in the drivers' unit.

¹⁰ This driver, Tracy Fontaine, remains employed as a CDL driver.

DISCUSSION

The issue before me is whether the regular part-time Class 1 drivers so lack a sufficient community of interest with the full-time CDL-C drivers that they must be excluded from the unit sought. The Board has enumerated the factors to be considered in determining whether employees do not have a sufficient community of interest to be included in a unit with other employees:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...; the infrequency or lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

Keeler Brass Co.,¹¹ citing *Kalamazoo Paper Box Corp.*¹²

Here, both the Class 1 drivers and CDL-C drivers are compensated on an hourly basis. Although the CDL-C drivers' wage rate begins a dollar an hour higher than the Class 1 drivers' wage, this difference is not significant considering the CDL-C drivers have a higher level of licensure than the Class 1 drivers. CDL-C drivers receive health benefits and vacation benefits, but Class 1 drivers do not. This is, however, merely a function of the fact that all the CDL-C drivers are full-time and all Class 1 drivers are part-time. Class 1 drivers do not receive overtime while CDL-C drivers regularly receive overtime. Again, this is a function of the fact that since CDL drivers work full-time, their additional work hours would likely result in overtime.¹³

All drivers are supervised by Ms. Tancrell and trained by Mr. Ackley. Both classifications of drivers work days, with CDL-C drivers beginning their day from 5:00 a.m. to 7:00 a.m. and Class 1 drivers beginning their day at about 6:45 a.m. Both classifications conclude their work day at about 4:00 or 5:00 p.m. CDL-C drivers work a full day and Class 1 drivers, as part-time employees, work a split shift.

The CDL-C drivers require additional skills as compared to the Class 1 drivers. They must obtain the training and skills required for a CDL license. They must also learn

¹¹ 301 NLRB 769, 776 (1991).

¹² 136 NLRB 134 (1962).

¹³ In its brief, the Employer recognizes that regular part-time employees belong in a unit with full-time employees, when they are shown to share a community of interests with the other drivers.

how to transport persons in wheelchairs. CDL-C drivers also follow varied trip schedules, as compared to the Class 1 drivers who follow the same route every day. However, I find these factors do not distinguish the drivers such that they do not share a community of interest. All drivers report to the same facility at about the same time every day and park their vehicles in the same lot. The two type vans they drive, one that transports up to 19 individuals and the other up to 15 individuals, reflect the similarity, rather than the difference, between the missions of the two groups of drivers. Although there is only minimal interchange between the two groups, this is not surprising considering the difference in licensing, and the record shows there is, indeed, some interchange with CDL-C drivers at times filling in for Class 1 drivers. In addition, there has been one Class 1 driver who has transferred to a CDL-C position. Moreover, all drivers perform their duties independent of other drivers, and there is no record evidence of much interchange among drivers within the two groups.

Since there is no dispute that the Class 1 drivers are regular part-time employees and Class 1 and CDL-C drivers both provide similar services to similar clients under similar working conditions, I find that Class 1 drivers share a sufficient community of interest with the CDL-C drivers to warrant their inclusion in an overall driver unit.¹⁴

CONCLUSION

Based upon all the foregoing, I find that the Class 1 licensed part-time drivers share a sufficient community of interests with the CDL licensed full-time drivers such that they may be included in an overall unit of the Employer's drivers. I will, therefore, include them in the unit found appropriate.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, including paratransit drivers, passenger van drivers, and driver/trainers employed by the Employer at its facility located at 664 Front Street, Woonsocket, Rhode Island, but excluding all other employees, dispatchers, office clerical employees, mechanics, maintenance employees, guards, and supervisors as defined in the Act.

There are approximately 17 employees in the unit found appropriate.

¹⁴ The record reveals that these part-time drivers drive regularly, about four hours a day, which well exceeds the Board's common test for inclusion of part-time employees in a unit with full-time employees, which is an average of four hours per week in the quarter preceding the voting eligibility date. See *V.I.P Movers*, 232 NLRB 14 (1977).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Amalgamated Transit Union, Division 168, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*,¹⁵ *NLRB v. Wyman-Gordon Co.*¹⁶ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.¹⁷ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before – March 3, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

¹⁵ 156 NLRB 1236 (1966).

¹⁶ 394 U.S. 759 (1969).

¹⁷ 315 NLRB 359 (1994).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 10, 2005.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 24th day of February, 2005.

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